

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

IN THE MATTER OF THE COMPLAINT OF
BRUCE OAKLEY, INC. and JOHNSTON'S PORT
33 INC., OWNERS OF THE M/V LEGACY, FOR
EXONERATION FROM OR LIMITATION OF
LIABILITY

Case No. 6:19-cv-00184-SLP

CLAIMS OF LMR FREIGHT, LLC AND MARQUETTE
TRANSPORTATION COMPANY, LLC
(Electronically Filed)

COME NOW, LMR Freight, LLC and Marquette Transportation Company, LLC (hereinafter collectively referred to as "LMR Freight"), by counsel, and for their Claims against Bruce Oakley, Inc. and Johnston's Port 33, Inc. (hereinafter collectively referred to as "Limitation Petitioners"), respectfully state as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and within the meaning of Rule F of the Supplemental Rules of Certain Admiralty and Maritime Claims.

2. LMR Freight was and now is a limited liability company organized under the laws of the State of Delaware and is a wholly owned subsidiary of Marquette Transportation Company, LLC, a limited liability company organized under the laws of the State of Delaware. These entities, collectively referred to as "LMR Freight," were and now are the manager, operator and/or owner *pro hac vice* of the LTD-11140 and the MTC-7256 barges.

3. Johnston's Port 33, Inc. was and is a corporation duly organized and existing under the laws of the state of Oklahoma and, upon information and belief, a wholly owned subsidiary of Bruce Oakley, Inc.

4. Bruce Oakley, Inc. was and is a corporation duly organized and existing under the laws of the state of Arkansas and, upon information and belief, is the parent company of Johnston's Port 33, Inc.

5. At all material times, Limitation Petitioners were the owners, operators and/or owners *pro hac vice* of the M/V LEGACY.

6. At all times material hereto, Limitation Petitioners operated a fleet in the vicinity of Muskogee, Oklahoma at the confluence of the Grand River and Arkansas River ("Oakley Muskogee Fleet").

7. On or about March 27, 2019, the MTC-7256 was delivered to the Oakley Muskogee Fleet by the M/V MISS ALEX, a towboat owned, operated, and/or owned *pro hac vice* by Jantran, Inc.

8. At the time, the MTC-7256 was carrying a cargo of fertilizer which, upon information and belief, was owned by Consolidated Grain and Barge Co. and CGB Enterprises, Inc.

9. From March 27, 2019, and at all material times hereto, the MTC-7256 was in the care, custody and control of Limitation Petitioners.

10. On or about April 5, 2019, the LTD-11140 was delivered to the Oakley Muskogee Fleet by the M/V BEVERLY ANN, a towboat owned, operated, and/or owned *pro hac vice* by Jantran, Inc.

11. At the time, the LTD-11140 was carrying a cargo of fertilizer which, upon information and belief, was owned by Consolidated Grain and Barge Co. and CGB Enterprises, Inc.

12. From April 5, 2019, and at all material times hereto, the LTD-11140 was in the care, custody and control of Limitation Petitioners.

13. At all relevant times while the LTD-11140 and MTC-7256 were moored in the Oakley Muskogee Fleet, a legal “bailment” existed with respect to the barges, with LMR being the “bailor” and Limitation Petitioners serving as the “bailee” of the barges.

14. On or about May 22, 2019, the LTD-11140 and the MTC-7256 broke loose from their moorings in the Oakley Muskogee Fleet, while in the care, custody and control of Limitation Petitioners.

15. The M/V LEGACY retrieved the LTD-11140 and the MTC-7256 and tied them to trees along the bank of the Arkansas River, near Mile 393.

16. There were available slots and shore wires within the Oakley Muskogee Fleet to secure the barges at the time that the crew of the M/V LEGACY secured the barges to trees.

17. Some hours after the barges were tied to trees, the trees uprooted, and the barges began traveling down the Arkansas River.

18. The crew of the M/V LEGACY was notified of the breakaway but refused to retrieve the barges, which were in Limitation Petitioners’ care, custody and control.

19. The barges traveled down the Arkansas River and struck the Webbers Falls Lock and Dam on May 23, 2019, causing the barges and their cargo to sink on the upriver side of the Webbers Falls Lock and Dam.

20. As a result of the breakaway from the Oakley Muskogee Fleet, LMR Freight sustained a total loss of the LTD-11140 and MTC-7256 and may incur substantial additional costs including, but not limited to, salvage expenses and damages to the United States Army Corps of Engineers for any damage caused to the Webbers Falls Lock and Dam.

21. The breakaway and damage to the LTD-11140 and MTC-7256 and to the Webbers Falls Lock and Dam, and all other direct and consequential damages resulting from the breakaway of the barges, were not the result or the fault and/or neglect of LMR Freight, or those for whom it is responsible, or the unseaworthiness of the LTD-11140 and MTC-7256, both of which were at all times tight, staunch, strong, equipped and supplied, and in all respects seaworthy and fit for the service in which they were engaged.

22. Under general maritime law, when barges break away from their moorings while in the custody and care of a bailee, it is presumed that the bailee was negligent in performing its duties as bailee with respect to the barges in its care and custody.

23. Pursuant to the doctrine of *res ipsa loquitur*, a party is presumed to be negligent if it had exclusive control of the instrumentality that caused the injury and without negligence the accident or injury would not have occurred, even when there is no specific evidence of a negligent act.

24. Any and all losses, damages, injuries, as aforesaid were caused or occasioned by the fault, neglect, inattention to duty, negligent operation, breach of warranty both implied and expressed, breach of bailment obligations, breach of statutory duties, rules and regulations and other violations of law and contract, including

the doctrine of *res ipsa loquitur*, which will be shown at the time of trial, on the part of Limitation Petitioners, as well as the crew of the M/V LEGACY, and/or the unseaworthiness of the M/V LEGACY.

25. As a result, LMR Freight is entitled to recover from Limitation Petitioners for the loss of and/or damage to the LTD-11140 and the MTC-7256 and related expenses, as well as contribution and/or indemnity for any damages it is found or otherwise compelled to pay to the United States Army Corps of Engineers or any other parties.

26. All in singular, the foregoing is true and correct and within the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE, Claimants, LMR Freight, LLC and Marquette Transportation Company, LLC, pray that their Claims be deemed good and sufficient, and after due proceedings had, there be judgment in their favor and against Limitation Petitioners Johnston's Port 33, Inc. and Bruce Oakley, Inc., for damages in an amount to be determined at trial, together with interest from the date of occurrence until paid, attorneys fees and all costs; for any amount that LMR Freight, LLC and Marquette Transportation Company, LLC have suffered and/or incurred and/or are ultimately held liable to any party claiming damages or injuries as a result of the incident made the subject of this suit and for all other general and equitable relief that the justice of the cause may require.

RESPECTFULLY SUBMITTED, this the 30th day of September, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I have this the 30th day of September, 2019, electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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